Supreme Court, U.S.
FILED
DEC 31 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-748

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROSE GRASTY, *et al.*,
Petitioners,
v.
AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO, CLC, *et al.*,
Respondents.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION

ARTHUR M. GOLDBERG
15 Union Square
New York, New York 10003

STEPHEN C. RICHMAN
121 South Broad Street
Philadelphia, PA 19107

LAURENCE GOLD
DAVID SILBERMAN
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5383
Counsel for Respondents

Of Counsel:
CYNTHIA ESTLUND
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
COUNTERSTATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	4
CONCLUSION	12

TABLE OF AUTHORITIES

Cases: Page

Adams v. Gould, 739 F.2d 858 (3d Cir. 1984), *cert. denied*, 469 U.S. 1122 (1985) 7, 11
Champion Int'l Corp. v. United Paperworkers Int'l Union, 779 F.2d 328 (6th Cir. 1985) 11
Conley v. IBEW Local 639, 810 F.2d 913 (9th Cir. 1987) 9
DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983) ..... *passim*
Derwin v. General Dynamics Corp., 719 F.2d 480 (1st Cir. 1983) 11
Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986) 11
Eatz v. IBEW, 794 F.2d 29 (2d Cir. 1986) 9
Erkins v. Steelworkers, 723 F.2d 837 (11th Cir. 1984), *cert. denied*, 467 U.S. 1243 ..... 9, 11
Lewis v. International Brotherhood of Teamsters, 826 F.2d 1310 (3d Cir. 1987) 11
Machinists Local v. Labor Board, 362 U.S. 411 (1960) 8
Plumbers & Pipefitters v. Plumbers and Pipefitters, 452 U.S. 615 (1981) 9
Rodman v. Hensley, 740 F.2d 665 (8th Cir. 1984), *cert. denied*, 471 U.S. 1016 9
Southwest Areas Pension Fund v. Kraftco, 799 F.2d 1098 (6th Cir. 1986) 11

Statutes:

National Labor Relations Act, as amended, § 10(b), 29 U.S.C. § 160(b) ..... *passim*
Labor Management Relations Act, § 301, 29 U.S.C. § 185 ..... 4, 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-748

ROSE GRASTY, *et al.*,

Petitioners,

v.

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO, CLC, *et al.*,

Respondents.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF IN OPPOSITION

The opinions below, basis for invoking this Court's jurisdiction, and statutory provisions involved in this case are correctly set forth in the Petition for a Writ of Certiorari at pp. 1-2 and we therefore do not repeat those matters here as well.

COUNTERSTATEMENT OF THE CASE

The statement of the case in the petition is incomplete and as a result creates a misleading impression of the facts of this case. For that reason, we begin with a full counterstatement of the proceedings to this point.

This case was commenced by a group of employees of Downs Carpet Company ("Downs" or "the Employer") who were dissatisfied with the representation they had

received from their bargaining representative, the respondents Amalgamated Clothing and Textile Workers Union ("ACTWU") and its Mid-Atlantic Regional Joint Board (collectively, "the Unions"). "The gravaman of the complaint," as plaintiffs advised the district court, "is that defendants failed to represent plaintiffs fairly or properly in their collective bargaining and employment relationship with Downs." [1]

In particular, plaintiffs' complaint—the allegations of which must be assumed to be true for purposes of this proceeding—alleges that in February, 1983 the Union fraudulently engineered the ratification of a new collective bargaining agreement with the Employer, Complaint ¶¶ 18, 19, and that the Unions thereafter "failed and refused to provide plaintiffs and the class with effective representation in their day to day relationship with their employer" by failing to press employee grievances—particularly discharge grievances—and by failing to protest the Employer's increase in the payroll deduction for medical insurance, *id.*, ¶ 20. The complaint further alleges that the Unions had: "allowed the organization of [ACTWU] Local 80," the Local to which plaintiffs belong, "to fall into chaos"; wrongfully caused the deduction of certain dues from some plaintiffs' pay; failed to rebate monies to Local 80 to which the Local was entitled; and failed to provide plaintiffs with copies of the collective bargaining agreement between the Union and the Employer. *Id.* ¶¶ 21-23. After reciting these "material allegations," plaintiffs' complaint contained five counts each of which stated a different legal theory for attacking some or all of the Unions' conduct as set out in those allegations.

The sole issue raised by plaintiffs' certiorari petition concerns the ruling below with respect to the statute of limitations applicable to the claim stated in Count I of plaintiffs' complaint. The Count alleges that by virtue

---

[1] Memorandum in Support of Motion for Class Certification at 2.

of the aforesaid conduct, the Unions "breach[ed]" the "duty of fair representation [owed to plaintiffs'] pursuant to the [Collective Bargaining] Agreement, its predecessor collective bargaining agreements and defendants' respective constitution and by-laws." Complaint, ¶¶ 27, 28.

The district court held that, under this Court's decision in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), Count I of plaintiffs' complaint is subject to the six-month statute of limitations contained in § 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. § 160(b). ("NLRA"). Having earlier denied plaintiffs' motion for class certification, and finding that all of the individual plaintiffs' claims were Count I claims which had accrued more than six months prior to the commencement of this action, the district court dismissed plaintiffs' lawsuit. *See* Pet. App. A-23 to A-28.

On appeal, the United States Court of Appeals for the Third Circuit (per Sloviter, Becker, and Garth, J.J.) affirmed in part and reversed in part. That court affirmed the district court's ruling that § 10(b) states the applicable limitations period for Count I of plaintiff's complaint, although the court also ruled that the district court had "erred by failing to determine whether [plaintiffs'] attempt to exhaust internal union remedies tolled the running of the statute." Pet. App. A-21. The court of appeals also overturned the district court's class action ruling and reinstated those counts of the complaint which alleged "claims accruing to the entire class." Pet. App. A-18 to A-20. Based on these rulings, the appellate court "remand[ed]" the case "for further proceedings consistent with [its] opinion." Pet. App. A-22.

Notwithstanding the interlocutory nature of this proceeding, plaintiffs urge the Court to issue a writ of certiorari to enable the Court to review the lower court's holding that § 10(b) states the limitations period for Count I of the complaint here.

REASONS FOR DENYING THE WRIT

The court of appeals' holding that Count I of plaintiffs' complaint is governed by § 10(b) represents no more than an application of the principles established by this court in *DelCostello*, *supra*, to the particular factual allegations here. Those allegations are, moreover, analytically indistinguishable from those in *DelCostello* itself. The decision below is not in conflict with that of any other court of appeals. Accordingly, that decision is not worthy of this Court's plenary consideration.

A. In *DelCostello*, this Court held that § 10(b) states the appropriate limitations period for a "hybrid § 301/fair representation claim," 463 U.S. at 165, *viz.*, "a claim [under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185] that the employer had breached a provision of a collective bargaining agreement, and that the union had breached its duty of fair representation by mishandling the ensuing grievance-and-arbitration proceedings," *id.* at 154. In reaching that conclusion the Court proceeded as follows.

The Court began by reviewing the general principles that are to be followed in establishing limitations periods for federal claims for which Congress has not enacted an express statute of limitations. While noting that in such cases the courts ordinarily "borrow . . . the most closely analagous statute of limitations under state law," *id.* at 158, the Court went on to state that . . . "where a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make that rule significantly more appropriate vehicle for interstital lawmaking, we have not hesitated to turn away from state law" to select an appropriate limitations period. *Id.* at 172.

The Court in *DelCostello* then held that "hybrid" § 301/fair representation claims fall within this latter

rule.[2] The Court reasoned that the hybrid action "has no close analogy in ordinary state laws," *id.* at 165, and that application of a long state-law limitations period would preclude the relatively rapid resolution of labor laws favored by federal law," *id.* at 168. In contrast, the Court found that § 10(b) provides a "federal statute of limitations actually designed to accommodate a balance of interests very similar to that at stake here—a statute that is, in fact, an analogy to the present lawsuit more apt than any of the suggested state-law parallels." *Id.* at 169. The Court noted both the "family resemblance [which] is undeniable" between hybrid claims and unfair labor practice claims to which § 10(b) applies in terms, and also "the close similarity of the considerations relevant to the choice of a limitations period." *Id.* at 170-71. The Court explained:

> "In § 10(b) of the NLRA Congress established a limitations period attuned to what it viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective-bargaining system. That is precisely the balance at issue in this case. The employee's interest in setting aside the 'final and binding' determination of a grievance through the method established by the collective-bargaining-agreement unquestionably implicates 'those consensual processes that federal labor law is chiefly designed to promote —the formation of the . . . agreement and the private settlement of disputes under it.' Accordingly, '[t]he need for uniformity' among procedures fol-

---

[2] The Court in *DelCostello* made clear that § 10(b) applies to a hybrid claim regardless of whether the plaintiff sues only the employer, only the union, or both parties because "the case [the plaintiff] must prove is the same whether he sues one, the other, or both." 462 U.S. at 165. Thus, the fact that this case was brought only against the Unions is of no legal significance in determining the applicability of § 10(b).

> lowed for similar claims, as well as the clear congressional indication of the proper balance between the interests at stake, counsel the adoption of § 10 (b) of the NLRA as the appropriate limitations period for lawsuits such as this." [*Id.* at 171]

B. The court of appeals in this case simply applied the holding and analysis of *DelCostello* to the particular factual allegations before it. That court first noted that Count I of plaintiffs' complaint in terms alleges a breach of the statutory duty of fair representation but that plaintiffs' counsel had "repudiated the allegations of a breach of the duty of fair representation made in the complaint to take advantage of what he assumed would be the longer statute of limitations applicable to claims of violation of the Unions' constitutions." A-16. Accepting that gambit as legitimate and viewing Count I as alleging a breach of a representational duty derived solely from the Unions' constitutions, the court of appeals held § 10(b) nonetheless controlling. That court reasoned:

> The material allegations in support of these claims are that the Unions fraudulently engineered the strike vote; that the Unions failed to pursue grievances of second-shift employees and terminated workers; that they failed to protest an increase in medical deductions by Downs; and that the Unions allowed Local 80 to "fall into chaos" and failed to conduct elections. App. at 10-11. Each of these claims implicates the policy considerations that led the Court to adopt the six-month limitations period in *DelCostello* because they are related to the Unions' role as exclusive bargaining representatives for Local 80's members. *While plaintiffs may choose to characterize these claims as arising from a breach of the Union's constitutions, the acts on which the claims are based are not dissimilar, indeed are identical, to acts which would support a claim for violation of the Unions' duty of fair representation.* The latter would be subject to a six-month statute of limitations. It would be anomalous were we to conclude that a claim for essentially the same acts was governed by two dif-

> ferent limitations periods depending on the name the party chooses to give the claim. [Pet. App. A-17 emphasis added]

In thus applying the *DelCostello* analysis to the specific factual allegations of Count I of the complaint, the court of appeals announced no sweeping general rule; rather that court simply made a fact-specific judgment that regardless of the *source* of the legal duty on which plaintiffs relied in Count I, the *substance* of the wrong alleged in Count I "implicates the policy considerations" that were controlling in *DelCostello*. At the same time the court below held that *other* allegations of petitioners' complaint—including the claim in Count II that the Unions had breached their constitutions by allegedly wrongfully deducting dues from disabled members and failing to make certain rebates to Local 80—were subject to Pennsylvania's four-year statute of limitations for contract actions and not the § 10(b) limitations period. The Court explained that those claims had "little or no relation to the day-to-day relationship between Local 80 and its members, on the one hand, and Downs, on the other," and "[t]he need for speedy resolution of the dispute is therefore not present." A-20. Plaintiffs are thus simply wrong in contending that the court below has applied *DelCostello* "indiscriminately," Pet. at 7, or in a manner that would "apply to virtually every Section 301 suit," *id.* at 8.[3]

C. Plaintiffs argue that the holding below "misreads and misapplies" *DelCostello*. Pet. at 7. Even if that were true, this case still would not merit review by the

---

[3] *See also Adams v. Gould*, 739 F.2d 858 (3d Cir. 1984), *cert. denied*, 469 U.S. 1122 (1985), in which the Third Circuit rejected the application of *DelCostello* to an action by former employees against their employer for the underfunding of their pension plan. In that pension dispute, the court held, "the immediate effect of the dispute on the day-to-day labor management relationship is slight," and a longer limitations period is appropriate. *Id.* at 867, *quoted* at A-19.

Court, for as we have just seen, the decision below, whether right or wrong, is a narrow and fact-specific ruling. In any event, as we now show, plaintiffs' attacks on the decision below are wholly without merit.

1. Plaintiffs first seek to distinguish *DelCostello* on the ground that "this case is not a hybrid suit; it does not challenge a grievance procedure." Pet. at 7-8. But plaintiffs' suggestion that the allegations here were not related to the Unions' handling of grievances is disingenuous. As we have seen, the factual allegation in which Count I rests were largely concerned with grievance handling: the complaint challenged the Unions' asserted failure to file and press grievances, and the Union's failure to protest, presumably through the grievance process, the Employers' increase in medical insurance deductions.

The significant remaining allegation underlying Count I—the allegation that the collective bargaining argument itself was fraudulently ratified—far from providing grounds for distinguishing *DelCostello* calls even more clearly for application of the § 10(b) limitations period. That allegation places into question not merely the resolution of a particular grievance but rather the validity of the entire contract, and thus the need for a "speedy resolution" is even more compelling than in a "hybrid" case.

That being so, *DelCostello*, not surprisingly, makes plain that its reasoning applies to *all* suits which "implicate[] 'those consensual processes that federal labor law is chiefly designed to promote—the *formation of collective bargaining agreements* and the private settlement of disputes under it." 462 U.S. at 163; emphasis added. Indeed, it was in a case involving a challenge to the validity of a collective bargaining agreement that this Court first stressed the need for the prompt resolution of labor disputes in order "to stabilize existing bargaining relationships." *Machinists Local v. Labor Board*, 362 U.S. 411, 419

(1960). And every court of appeals that has considered the limitations issue has concluded that *DelCostello* controls in fair representation suits not concerned exclusively with grievance representation, including suits challenging a union's actions in negotiating a collective bargaining agreement.[4]

2. Plaintiffs alternatively argue that because § 301 was enacted to assure that unions are " 'legally accountable for agreements into which they enter[],' " it would be "anomalous to subject the right [to sue to enforce such agreements] to the six-month statute of limitations contained in Section 10(b) as opposed to the forum state statute of limitations for contract claims." Pet. at 5-6.[5] But as we have seen, the court below did *not* hold § 10(b) applicable to § 301 suits generally or to all § 301 suits seeking to enforce union constitutions; indeed the court below *refused* to apply § 10(b) to Count II of plaintiffs'

---

[4] *See, Conley v. IBEW Local 639*, 810 F.2d 913 (9th Cir. 1987) (discriminatory hiring hall procedures); *Eatz v. IBEW*, 794 F.2d 29, 33 (2d Cir. 1986) (negotiation of discriminatory contract provisions); *Rodman v. Hensley*, 740 F.2d 665, 666-667 (8th Cir. 1984); *cert. denied*, 471 U.S. 1016 (discrimination in union hiring hall); *Erkins v. Steelworkers*, 723 F.2d 837 (11th Cir. 1984), *cert. denied*, 467 U.S. 1243 (union misconduct during strike, including failure to negotiate reasonable successor collective bargaining agreement).

[5] Plaintiffs' argument in this regard necessarily presupposes that a claim by individual upon members against a union for breach of a union's constitution states a federal cause of action under § 301. This Court expressly left that question open in *Plumbers & Pipefitters v. Plumbers & Pipefitters*, 452 U.S. 615, 627 n.16 (1981).

That neither party in this Court takes issue with the lower court's affirmative answer to that question provides yet another reason why plenary review of this case is inappropriate. If the Court were to grant review here, the Court would either have to assume *arguendo* the existence of a federal cause of action in order to reach the limitations issue or, alternatively, the Court would have to decide the questions left open in *Plumbers & Pipefitters* without the benefit of an adversary presentation.

complaint which alleges certain violations of the Unions' constitutions. All that the appellate court held is that Count I of the complaint in this case—which seeks to imply from the Unions' constitutions a contractual duty of fair representation and hold the Unions liable for breaching that duty—is governed by § 10(b).

There is nothing the least bit anomalous in that holding. Rather, what "would be anomalous," as the court below stated, would be "to conclude that a claim for essentially the same acts was governed by two different limitations periods depending on the name the party chooses to give the claim." Pet. App. A-17. Virtually every union constitution contains the kind of general provisions upon which plaintiffs here rely: provisions which do nothing more than establish the Unions' basic structure and allocate tasks to the International and its affiliated intermediate and local bodies.[6] Thus, virtually every union constitution could equally support

---

[6] The court of appeals catalogued the alleged breaches of the Union constitutions as follows:

> Plaintiffs point to several provisions of the Unions' constitutions in support of their contention that the Unions' actions are properly characterized as a breach of the Unions' constitutions. They argue that Art. VII § 1 of the ACTWU constitution provides that "the membership shall be organized into local unions and/or joint boards," that the members of every local are required to delegate the exercise of their rights under Section 7 of the NLRA, 29 U.S.C. § 157 and Art. VII § 4 of the ACTWU constitution to the Joint Board, and that the Joint Board had the sole authority to execute collective bargaining agreements with Downs under Art. VII § 3 of the Joint Board's constitution, that under Art. VII, § 4 of the Joint Board's constitution only the Joint Board can call or conduct a strike, that under Art. III. § 8 of Local 80's constitution and Art. VII § 3(a) of the ACTWU constitution the Joint Board was obligated to organize Local 80, and that the financing of ACTWU, the Joint Board and Local 80 required dues rebates of $.15 and $.25 per month to Local 80 and the shop association respectively. [Pet. App. at A-15 to A-16 n.10]

a "breach of contract" claim of the type plaintiffs here advance. If § 10(b) did not apply to such claims, the door would be open to wholesale evasion of the time limits established by *DelCostello* through nothing more than artful pleading. *See also Erkins v. Steelworkers, supra*, 723 F.2d at 839-40; *Lewis v. International Brotherhood of Teamsters*, 826 F.2d 1310 (3d Cir. 1987.)

D. Contrary to plaintiffs' assertion, the court of appeals' measured application of *DelCostello* is not in conflict with the decision of any other court of appeals. None of the cases plaintiffs cite in which appellate courts declined to apply § 10(b) to various types of labor law claims bears any resemblance to the case at hand.[7] None involved an individual's claim against a union based on *either* the duty of fair representation *or* the union's constitution. Accordingly, those cases provide no warrant for the Court to review the instant case.

---

[7] *See Derwin v. General Dynamics Corp.*, 719 F.2d 480 (1st Cir. 1983) (suit by a union against an employer to confirm an arbitration award); *Doty v. Sewall*, 784 F.2d 1 (1st Cir. 1986) ("Bill of Rights" claim under LMRDA with no impact on the labor-management relationships or the resolution of disputes under the collective bargaining agreement); *Champion Int'l Corp. v. United Paperworkers Int'l Union*, 779 F.2d 328 (6th Cir. 1985) (employer's suit to vacate arbitration award); *Southwest Areas Pension Fund v. Kraftco*, 799 F.2d 1098 (6th Cir. 1986) (pension dispute in which the Court relied on Third Circuit's decision in *Adams v. Gould, supra*, in rejecting application of *DelCostello*).

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

ARTHUR M. GOLDBERG
15 Union Square
New York, New York 10003

STEPHEN C. RICHMAN
121 South Broad Street
Philadelphia, PA 19107

LAURENCE GOLD
DAVID SILBERMAN
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5383
Counsel for Respondents

Of Counsel:

CYNTHIA ESTLUND
1000 Connecticut Ave., N.W.
Washington, D.C. 20036